

Honorable Joseph C. Welty
Criminal Department Presiding Judge
Superior Court of Arizona, Maricopa County
175 W. Madison St.
Phoenix, AZ 85003
(602) 372-2537

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:

} Supreme Court No. R-14-____

}
} PETITION TO AMEND RULE 2.3
} OF ARIZONA RULES OF
} CRIMINAL PROCEDURE
}

Pursuant to Rule 28, Rules of the Supreme Court of Arizona, the Criminal Department Presiding Judge of the Superior Court of Arizona in Maricopa County, respectfully petitions this Court to adopt the attached proposed amendment to Rule 2.3 of the Arizona Rules of Criminal Procedure.

The current version of Rule 2.3(a) was drafted in 1975, long before anyone envisioned the ability to electronically file pleadings with the court. The rule requires “an oath before a magistrate,” which requires the law enforcement office or representative to appear before a magistrate to take the oath. This requires an allotment of time in which a judicial officer is available to give the oath, and precludes the ability to electronically file the document.

Courts in Arizona have been moving toward electronic filing of pleadings for several years, including mandatory electronic filing in certain case types. The Superior Court in Maricopa County currently allows electronic filing of many pleadings in criminal court cases. However, the language in Rule 2.3(a), which provides for an “oath before a magistrate,” is an impediment to electronic filing of criminal complaints.

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1 To enable the electronic filing, the Superior Court in Maricopa County
2 requests an amendment to Rule 2.3(a), providing for an electronic oath, as
3 follows:

4 **a.** A complaint is a written statement of the essential facts
5 constituting a public offense, that is either signed by a prosecutor, or
6 made upon oath before a magistrate, or made in accordance with
7 A.R.S. § 13-3903. IN ANY COMPLAINT, AN ELECTRONIC
8 OATH OR AFFIDAVIT CONTAINING AN ELECTRONIC
9 SIGNATURE OF A LAW ENFORCEMENT OFFICER OR LAW
10 ENFORCEMENT AGENCY REPRESENTATIVE SHALL
11 SATISFY THE CONSTITUTIONAL REQUIREMENT THAT THE
12 COMPLAINT BE MADE UNDER OATH, PROVIDED THAT
13 SUCH ELECTRONIC OATH OR SIGNATURE IS MADE UNDER
14 PENALTY OF PERJURY.

15 Rule 2.13 of the Local Rules of the Superior Court in Maricopa County
16 authorizes the use of and affirms the validity of an electronic oath. As a result,
17 with the above amendment, the Superior Court can begin electronic filing of
18 complaints in criminal cases.

19 For the foregoing reasons, the Criminal Department Presiding Judge of the
20 Superior Court in Maricopa County respectfully requests this Court amend Rule
21 2.3 to allow an electronic oath on direct complaints. This will enable criminal
22 complaints to be electronically filed.

23 Respectfully submitted this 10th day of January, 2014.

24 /s Joseph C. Welty

25 Hon. Joseph C. Welty
26 Criminal Department Presiding Judge
27 Superior Court of Arizona, Maricopa County
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29 Electronic copy filed with the Clerk
30 of the Supreme Court of Arizona
31 this 10th day of January, 2014.

1 Exhibit A

2 Rules of Criminal Procedure

3 **Rule 2.3. Content of Complaint**

4 **a.** A complaint is a written statement of the essential facts constituting a public
5 offense, that is either signed by a prosecutor, or made upon oath before a
6 magistrate, or made in accordance with A.R.S. § 13-3903. IN ANY
7 COMPLAINT, AN ELECTRONIC OATH OR AN AFFIDAVIT CONTAINING
8 AN ELECTRONIC SIGNATURE OF A LAW ENFORCEMENT OFFICER OR
9 LAW ENFORCEMENT AGENCY REPRESENTATIVE SHALL SATISFY
10 THE CONSTITUTIONAL REQUIREMENT THAT THE COMPLAINT BE
11 MADE UNDER OATH, PROVIDED THAT SUCH ELECTRONIC OATH OR
12 SIGNATURE IS MADE UNDER PENALTY OF PERJURY.

13 **b.** Upon filing a charging document in a criminal case in which a defendant is
14 charged with any offense listed in A.R.S Title 13, chapters 14, 32, 35 or 35.1 or in
15 which the victim was a juvenile at the time of the offense, the prosecuting agency
16 shall advise the clerk that the case is subject to the provisions of Supreme Court
17 Rule 123(g)(1)(C)(ii)(h).
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